FOR MYSORE STATE

Health (195 3) Department.

Ms. SERIES.

G.O. NO. 685

Dated 26th February 1953

Passed
KWS
Supdt.

[Despatch Abstract.]

SUIT - Suit Notice - Srimathi Albina D'Souza - Previously Maternity Assistant, Vandse - South Kanara District - Against termination of service - Decision to await threatened suit - papers recorded.

Medical Department.

From

Dr. P. Arunachalam, MD., MRCP., TDD(Wales)., DMR (Lond).,
Director of Medical Services, Madras 6.

To,

The Secretary to Government, Health Department, Madras.

DEPUTY SECRETARY
45086
HEALTH DEPT.

Ref. No.94593-1-G2 Dated 22--9--52.

Sir,

Sub:- Srimathi Albina D'Souza- Ex.Maternity Assistant-Rural Dispensary, Vandse, South Kanara District-Removal from Service-Suit Notice-Permission to engage Government Pleader.

Ref:- G.O.Ms.No.442 H dated 11--2--52.

I enclose for the information of Government a copy of letter C.No.5710/52 dated 10.9.52 from the District Medical Officer, South Kanara along with its enclosure. Necessary sanction may kindly be accorded in the matter.

Yours faithfully,

22.9

for Director of Medical Services.

Prv. 19.9.

Copy of letter No.C.No.5710/52 dated 10.9.52 from the District Medical Officer, South Kanara, Mangalore addressed to the Director of Medical Services, Madras.

Sub:- Suit Notice-Public Services-Midwife-Rural Dispensary Vandse-Srimathi Albina D' Souza-termination of service.
Ref:- Letter Ref.A.3.22752-52 dated 6.9.1952 from the District Collector, South Kanara, Mangalore.

I enclose a copy of the Suit Notice received by the Collector of South Kanara from Sri V.Srinivasa Shetty, B.A., L.L.B., Advocate, Coondapur on behalf of Srimathi Albina D' Souza wife of Sri Gregory Saldana residing at Sasthan, Udipi taluk and forwarded to me for necessary action. The complainent in this case Srimathi Albina D' Souza was employed in the rural dispensary, Vandse and she was dismissed with effect from 4.3.1951. Her appeal to you was also dismissed. I think this is a case to be contested. ~~I request that early sanction~~ .I request that early sanction may kindly be obtained from the Government for engaging the services of the Government Pleader to proceed further in the matter

Copy to the Collector of South Kanara, Mangalore for information.
Copy to the Government Pleader, Mangalore for information and favour of necessary advise in the matter.

Copy of the letter Ref.No.A3.22752-52 dated 6.9.1952 from the Collector's Office, Mangalore, South Kanara.

SUIT-Notice- Public Services-Midwife-rural dispensary wandse-Srimathi Albina D' Souza-terminhation of services-damages-claims.

I enclose a copy of the suit notice received by me from Sri V. Srinivasa Shetty, B.A. L.L.B. Advocate, Coondapur on behalf of Srimathi Albina D' Souza wife of Sri Gregory Saldanaha residing at Sasthan, Udipi taluk. Please acknowledge its receipt and take further action in the matter.

/By order/

Copy of suit notice from V.Srinivasa Shetty BA.L.L.B Advocate Coondapur South Kanara to the District Collector. S.Kanara dated 1.9.52.

I have been desired by my client Srimathi Albina D' Souza wife of Mr.Gregory Saldnaha residing at Sasthan Udipi taluk to address you as hereunder:-

Ref:- Agreement dated 5.6.50 effective from 10.5.50 for 3 years period--expiring on 10.5.1953 appointment as Midwife-Rural Dispensary Vandse, South Kanara--termination of services by District Medical Officer by proceeding dated 28.2.1951 appeal dated 12.3.51 to the Director of Medical Services Madras- declining to interfere- Memorial to Government --Order dated 11.2.52 --order of dismissal wrong- enquiry purported to be held by the Assistant Medical Officer irregular- Inequitable-opposed to principles of natural justice improper and invalid-confirmation of termination by Director of Medical Services, Madras also inequitableand illegal -branch of contract-damages claimed -or restoration sought-statutory notice of suit.

My client Srimathi Albina D' Souza underwent her course and got her diploma to carry on her profession as Midwife in about 1923. Thereafter she successfully served as Midwife in various medical institutions and discharged her duties faithfully honestly and to the satisfaction of her superiors. She holds as evidence thereto testimonials from various medical officers. She was engaged to serve at the Rural Dispensary at Kokkarne which is run by a Rural Medical Practitioner subsidised by the Government through the District Board of South Kanara. On termination of leave my client was appointed as Midwife Rural Dispensary at Vandse on a monthly subsidy of Rs.40/-by the District Medical Officer of South Kanara by proceedings dated 1.4.50. In fulfilment of the statutory requirements an agreement dated 5.6.50 was entered into between the

Government of Madras as 1st party President of the District Board as 2nd party and my client as 3rd party. Agreement is operative for 3 years from 10.5.1950. Thus normally the contract is to annure till 10.5.53. Somehow the Rural Medical Practitioner at Vandse found that my client was an impediment to his own ways. The said Rural Medical Practitioner had entrenched himself in the locality as a mighty force. Persons who did not fall in line with his whims and wishes were condemned to trouble and harrassment. Suffice it to say without any adequate cause or justification the said Rural Medical Practitioner began to harass my client, found imaginary grievances and levelled untrue charges against her. This led to diverse dissensions and disputes. All these days my client discharged her duties properly, conscientiously without default. Behind the back of my client, the Rural Medical Practitioner of Vandse made false and untrue reports. My client was supprised at the same.

On 12-2-1950 explanation was called for from my client with regard to the so called derelection of duty on 24th and 25th July 1950 while in point of fact she had actually worked on the 24th and had applied for casual leave on 25th and 26th July 1950 through the Rural Medical Practitioner and by way of abundant caution also to the District Medical Officer, was however pleased to sanction the leave asked for. In furtherance of his design however, the Rural Medical Practitioner submitted complaint attributing derilict on of duty on the part of my client. The District Medical Officer unwillingly was led to call for an explanation from my client forgetful of the circumstance that leave had been sanctioned for the 25th and 26th. The Rural Medical Practitioner out of evil intent had twisted the facts by also adverting to wrong dates. In reply to the explanation called for by the District Medical Officer my client had set forth the plain and unequivocal facts, when the Rural Medical Practitioner had to shift his position and mention the dates as 25th and 26th instead of 24th and 25th. Matters were set at rest by the circumstance that casual leave had been sanctioned for these two days. The Rural Medical Practitioner having failed in his attempt cherished more grievance and nourished more bitterness and went on levelling charges that my client attended the dispensary irregularly and that she refused to accept the Midwifery outfit and that she was very insubordinate to the Rural Medical Practitioner and that she demanded exhorbitant fees for attending labour cases and that my client failed to produce registers to Rural Medical Practitioners for checking and also on the date of enquiry. It is a well known fact all the country over there that the Rural Medical Practitioner and my client were not pulling on well. The representative of the locality in the District Board, Mr.L.Soorappa Shetty, B.A., B.L., fully acquainted with the facts, addressed a letter to the District Board President on 9.2.1951. Without adverting to greater details it may be mentioned that on 20.2.1951 the District Board President was pleased to address the District Medical Officer recommending a transfer and observed(the transfer' if effected soon would be in the interests of both the doctor and the midwife and not to speak of the people of Vandse. He also requested a consideration of the above proposal and issue of early orders in the matter.

In the meanwhile the Rural Medical Practitioner whipped up the campaign against my client and withheld papers that were addressed to my client. It would appear that it was falsely represented and reported that my client had refused to accept the copies that were addressed her. She had requested copies of statements to be supplied to her and the same were with-held from her.

By a communication dated 17.8.1950 my client was called upon to explain 5 charges. The explanation was submitted. Therein she had stated correct facts. The enquiry was closed with a warning. Few observations made therein however emboldened the Rural Medical Practitioner to further make accusations against my client. As a result of further mischief by memorandum dated 23.11.1950 3 more charges were framed against my client. The 1st charge was that my client failed to accept the midwifery outfit said to have been offered by the Rural Medical Practitioner and failed to furnish an acknowledgement for the same. In those days of scarcity of midwifery articles no sensible person will refuse any outfit and outfit is a valuable assest which my client will never refuse. In point of fact the Rural Medical Practitioner did not offer them at all. This rude conduct of his becomes crystal clear when it is seen that the Rural Medical Practitioner deliberately failed to apply for the subsidy payable to my client.

(directly. By design and mischievous purpose the Rural Medical Practitioner did not forward the application as my client subsequently learnt. This was so done with intent to get my client into trouble. The District Medical officer

The 2nd charge was that my client does not forward progress report of ante-natal cases. This is again a deliberatly false charge. Under the terms of the agreement my client is bould to send a report in the form prescribed by the Surgeon-General. This form had not at all been supplied to my client. Thus there could not have been default on her part. Yet in faithful discharge of her duties she had been submitting the number of labour cases conducted by her, through the Rural Medical Practitioner and by a way of abundant caution yet a separate copy to the District Medical Officer, directly. Thus it will be seen that this part of this charge is also baseless.

With regard to forwarding of report of antenatal work in correct step had been taken. Under the agreement, no report of ante-natal work is to be forwarded to any body. A register is to be maintained and which register is to be made available to Rural Medical Practitioner and other higher authorities. Hence it will be seen that the charge laid against my client is not in accoreance with the terms of agreement and is on the other hand wholly beyond the scope of powers enjoyed and vested in the District Medical Officer.

The 3rd charge is that my client failed to produce the registers to Rural Medical Practitioner for check and verification. This again is a false charge. My client gas no desire or motive to refuse to show any register and particularly so whenshe is cautions enough to send extra copies to District Medical Officer. One peculiar feature of all the 3 charges is that the running common factor is in the shape of the Rural Medical Practitioner himself being the person who can speak about them. Needless to say that under the circumstances enumerated above my client feels and asserts that these tactics based on untrue statements were resorted to by the Rural Medical Practitioner wantonly and the higher authorities were beguiled into wrong conclusions.

By proceedings communicated my client the Assistant District Medical Officer was deputed to hold an enquiry on 22.12.1950 in the dispensary premises. Notice of this was sent to my client directly. There was no proper enquiry held at all. The Assistant District Medical Officer was influenced and prejudiced against my client by the Rural Medical Practitioner. My client was not given an opportunity to cross-examine the persons examined. Yet another feature was that all the so called witnesses were made to assemble simultaneously with a view to have corroborative and consistant statements of witnesses making false allegations against my client and she was refused the statements of the witnesses examined. Further the witnesses who were examined did not at any time lodge any complaint against my client. This is opposed to principles of natural justice. A report would appear to have been submitted by Assistant District Medical Officer on the basis of which the District Medical Officer sent intimation calling upon my client to put in a statement if she so desired. For the purpose of putting up the defence my client wanted copies of the statements. She was not furnished with same. She subsequently learnt from proceedings of the District Medical Officer dated 28.1.51 that copies of the statement were forwarded to my client and that they were sent to the Rural Medical Practitioner for delivery to my client. This procedure is strange. Promising that copies of statements were sent the Rural Medical Practitioner took under advantage and made false report that my client refused to accept it and give a receipt. In point of fact, my client asserts that she never refused. She even sent a reminder and was awaiting the copies inorder to submit her statement of defence. Strangely my client received proceedings of District Medical Officer dated 28.2.1951 whereunder myclient's services have been alleged to have been terminated. These proceedings are wrong, ultra vires and are in invasion on the just rights of my client. My client appealed to Director of Medical Services and also to Local Government with no success. She is thus constrained to issue this notice. My client asserts that she has been fairly and faithfully discharging her duties. The Rural Medical Practitioner made false allegations. This was not properly enquired into. Alleged enquiry is irregular and infructuous. Proceedings dated 28.2.1951 are also vitiated by inclusion of points other than

(p.t.o)

covered by charves intimated under date 23.11.1950. Charges which had been closed have been mixed up and the enquiry is vitiated by bringing in charges other than those whereon enquiry was intiated. Further my client by this illegal act has been made to lose her subsidy of Rs.40/- per month and the additional subsidy of Rs.6/- per month granted by the President District Board. In short all the proceedings whereunder my client's services were terminated are invalid in law. My client therefore avers that there has been an improper termination of service, wrongful dismissal and wanton breach of contract. My client therefore demands that breach of contract be remedied and the order of termination be set aside and that she should be restored to her office with full payment of past subsidy. In the alternative she claims a sum of Rs.2500/-as damages for breach of contract. This may be treated as the statutory notice, on expiration of which period, legal proceedings will be instituted seeking proper relief including the cost of this demand. Expecting an early reply.

/true copy/

for Director of Medical Services

9

Medical Department

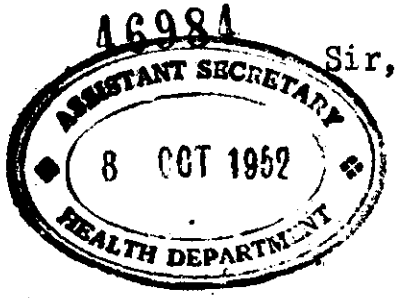
From

Dr.P.Arunachalam,MD.,MRCP.,TDD(Wales)FMR.(Lond),
Director of Medical Services,Madras 6.

To

The Secretary to Government, Health Department,Madras.

Ref:No.94593-2-G2.,dated 7/x October 1952.



Sir,

Sub:-Srimathi Albina D'Souza - Ex-Maternity Assistant Rural Dispensary, Vandse - South Kanara District Removal from Service - Suit notice

---

Ref:-Correspondence resting with my letter Ref.No. 94593-1-G2.dated 22-9-1952.

I forward herewith for the information of Government a *copy of letter C.No.5710/52,dated 29-9-1952 of the District Medical Officer, South Kanara addressed to Sri V. Srinivasa Shetty, BA.,BL.,Coondapur.

Yours faithfully,

for Director of Medical Services.

===

*Copy of letter.

MK 9.10.52

I have to inform you that several allegations made in your letter bearing date 1st September 1952 are not true nor any they admitted. There has been no improper termination of service nor any wrongful dismissal nor any wanton breach

breach of contract as alleged therein. In any case there is no cause of action as against the Government. If in spite of this your client proceeds to institute any legal proceedings, the same will be defended at her risk.

/True copy/

for Director of Medical Services.

MR.6/10.

re W.016112-I
O/ASI

ASSISTANT-SECRETARY 16415 17 OCT 1952 LEGAL DEPARTMENT

Health Dept (92)

May be filed with C.No. 45086/52 on its return from Legal/Finance Dept. [The main file is one in which a maternity assistant proposed to sue the Govt for having terminated her services, if she is not reinstated in service or paid damages]. Legal/Finance may be reminded on 20.10.52 the file having been sent to them only on 11.10.52]

14.10.52

C.No. 469849/52-2/MR

Dated 15.10.52

14.10.52

15/10 Legal/Fin.

Very Urgent

Health (I2) Deptt.

Memo. 45086 I/52-5 Health dated 21-11-52.

DP 20-11-52 72/21-11

p. 1 cf.
p. 7 cf.

Sub:- Suit notice - Srimathi Albina D. Souza - Previously Maternity Assistant, Rural Dispensary, Vandse - South Kanara District Against termination of service.

Ref:- From the D.M.S., No.94593-1.G2.dt.22.9.52.
From the D.M.S., No.94593-2-G2.dt. 7.10.52.

The Government consider that it is desirable to satisfy themselves that their case is not weak in case the party files a suit against them in a Court of law. The D.M.S. is requested to reexamine the following points:-

hfr. 2-3 nf.

(i) that the prescribed procedure had been properly followed before the services of the Ex. Maternity Assistant were terminated by the D.M.O., South Kanara, or before her appeal was rejected by the D.M.S.;

(ii) Is the D.M.O. the competent authority to terminate the services of the Maternity Asst. and is there a statutory right of appeal to the D.M.S. against an order of such termination by the D.M.O.

Legal note
Hr 2-3 nf.

2. The Ex. Maternity Assistant had alleged that copies of the statements of witnesses who deposed against her were not furnished, that the report of the R.M.P. of the dispensary, that copies were tendered but were refused to be received by her was false, and that she was not allowed to cross-examine the witnesses. The D.M.S. is requested to verify whether these allegations were dealt with in the order of termination of her services. The Director is also requested to obtain and forward to Govt. the file of the office of the D.M.O. relating to the termination of the services of Srimathi Albina D'Souza together with his (Director's) office file relating to her appeal against the orders of the D.M.O. terminating her services.

10

3. The D.M.S. is requested to ascertain from the D.M.O. South Kanara District whether any legal proceedings have been taken by the party so far in spite of his (D.M.O's) advice in his letter No.4710/52. dated 29.9.52 to the Counsel for the Ex. Maternity Assistant and report the fact to Govt.

Mr 7-8 cf.

4. This reference should be treated as very urgent.

20.11.52 KM 20-11-52

21.11.52

To
The D.M.S.

MEDICAL DEPARTMENT.

From

Dr. P. Arunachalam, MD.,MRCP(Lond).,TDD(Wales).,MMR(Lond).,
Director of Medical Services, Madras. 6.

To

The Secretary to Government, Health Department, Madras.

Ref.No.94593-4-G2 dated 24-12-1952.

Sir,

Sub:- Suit Notice - Srimathi Abbina D'Souza - Previously Maternity Assistant, Rural Dispensary, Vandse, South Kanara District - Against termination of service.

Ref:- Government Memo.No.45086-I/52-5 Health dated 21-11-1952.

I enclose for the information of the Government a *copy of letter C.No.7767/52 dated 28-11-1952 of the District Medical Officer, South Kanara.

It would be seen from this letter of the District Medical Officer and his files (sent herewith) that the prescribed procedure had been properly followed by him before the services of the Ex-Maternity Assistant were terminated. The procedure had also been properly followed by me before the appeal was rejected.

3 At the time the services of the Maternity Assistant were terminated, the District Medical Officer was the competent authority to do so as per clause 8 of the agreement form appended to G.O.No.1344 Public Health dated 5-5-1942. Now the powers of appointments and punishments of Maternity Assistants are vested with the President, District Board, Vide clause 9 of the agreement form appended to G.O. No.3478 Health dated 11-10-1951. The Director of Medical Services is the appellate authority as per the same clause.

I have further to state that the allegations made by the Maternity Assistant have been duly dealt with in the proceedings of the District Medical Officer terminating her services.

5 No legal proceedings have been taken by the party so far.

6 Two files of the Office of the District Medical Officer, South Kanara and one of this Office are sent herewith as desired by the Government.

Yours faithfully,

For Director of Medical Servi

Tpk.24/12.

*Copy of letter:

I invite your kind attention to the following references:

1. P.No.338-G2/51 dated 12-11-1951 from the Director of Medical Services - File 'B'
2. My letter R.O.C.No.5438-HC/51 dated 18-12-1951 - File B.
3. G.O.(Ms)No.442, Health dated 11th February 1952.

As I have stated already in my letter R.O.C.No.5438-HC/51 dated 18-12-1951 the prescribed procedure had been properly followed.

As per the Agreement Bond para (10) the District Medical Officer should be the competent authority for disciplinary action and the then Surgeon-General(now Director of Medical Services) the appellate authority.

From the statements recorded on pages 88 and 92 (File A) it would be seen that the petitioner (Maternity Assistant) was given opportunity to cross-examine the witnesses.

Page 107 of File (A) would show that allegations of the

COUNCIL RESOLUTION NO. 211 d/ 14-2-53.

MEETING SLIP FOR COUNCIL

H2/7870/52.

Council resolution No.1226 dated 1
to Public Health & Finance Committee the lett
8-5-52 of the Secretary, Municipal Worker's U
and resolution No.1/ 27-1-53 of the Public Hea
resolving that the recognition of the Union by
pality would arise if the office bearers of th
elected from among persons who are in active sel
local bodies as laid down in G.O.1671,L.A. Date
but however in view of G.O.Ms.No.3138, Health d
which directs that representations from the San
should be heard irrespective of the fact whether
Union is recognised or not, the question of recog
not become material and the Union may be informed
and that the Sanitary Workers(publci health menials
this Municipality be granted an enhancement of Rs
month in their basic pay and a sum of Rs.3/- per
house rent allowance till quarters are provided
as already resolved by this council in its resolu
No.152 d/ 25-2-50 in view of the increased cost o
and the wages which are paid to unskilled worke
per prevailing local market rates and resolution
31-1-53 of the Finace committee approving the
dation of the Public Health committee and the fi
papers.

COUNCIL RESOLUTION NO.211 dat

The recommendations of t
Health Committee and Finance Com
accepted and the Government may
sanction the same early.

(Sd.) K.S.N.Adi
Chairman

ASSISTANT SECRETARY
27 MAR 1953
HEALTH DEPARTMENT

(true copy)

Sd. M.Govin
Com sio

the Maternity Assistant"that copies of the statements of witnesses who deposed against her were not furnished, that the report of the Rural Medical Practitioner of the dispensary that copies were tenderdd but were refused to be received by her was false, and that she was not allowed to cross examine the witness etc" have been dealt with by the District Medical Officer in the order of the termination of the services of the petitioner.

This Office is not aware of any further legal proceedings in the affair.

It will be relevant to point out here that the appeal had been before the Government once, but the order of the Government was "The memorialist is informed that the Government decline to interfere in the matter"(G.O.Ms.No.442 Health dated 11th February 1952 File A).

(L)

Two office files and the Agreement Bond of the Maternity Assistant are herewith forwarded for favour of perusal and return.

/True Copy /

For Director of Medical Services.

4

Health (G2)

G.O.Ms.No: 1344 P.H.d — 5.5.42.

reported to ah page 11 ante has been called for from the M.R.O, Egmore. The receipt may be awaited till 5.1.53.

2.1.53.

21.1.53

3.1.53

Dfm Section

15

Enclosures. (W), (A), (O) and (S).

Health (I2) Deptt.

SUB: Suit Notice - Srimathi Albina D'Souza - Previously Maternity Assistant, Rural Dispensary, Vandse - South Kanara District Against termination of service - Decision to await threatened suit.

---

pp 1 and 11-c-7

REF: From the D.M.S., letter No.94593-1. dated 22.9.52. and No.94593-4.G2. dated 24.12.52.

Memorandum No.45086 I2/52/~~8~~Health dated 13.2.53

The D.M.S. is informed that the threatened suit ~~notice~~ from Srimathi Albina D'Souza, previously maternity assistant, Rural Dispensary, Vandse, may be awaited.

2. The records sent to Government with the letters of the D.M.S. cited above are returned to him. He is requested to acknowledge receipt of the records.

(W), (A), (O) and (S). Addressed enclosures. S.P. 13.2.53.

To

The D.M.S.
(with files at (W) (A), (S) and (O).

13.2.53 KM 9.2.53

SAS 11.2.53

Despatcher
Pl despatch enclosure.

(O) D.M.S' file.

(A) D.M.O's file

(S) Agreements executed by maternity assistants

(W) D.M.S' file

MEDICAL DEPARTMENT.

***

From

Dr.P. Arunachalam, MD.,MRCP.,TDD.(Wales).,DMR.(Lond).,
Director of Medical Services, Madras-6.

To

The Secretary to Government, Health Department, Madras.

Ref.No.94593-5-G2/52, dated 23-2-1953.

9213

Sir,

Sub:- Srimathi Albina D'Souza - Previously Maternity Assistant, Rural Dispensary, Vandse - South Kanara District - Termination of Service - Suit Notice against.

Ref:- Government Memo.No.45086-I.2/52-8 dated 13-2-1953.

--

The records sent with the Government Memo. cited have been received in this office.

ASSISTANT SECRETARY
24 FEB 1953
HEALTH DEPARTMENT

Yours faithfully,

for Director of Medical Services.

PN.19-2-

C. No: 45086/52. Health Dept (Q2)

Subs:— Srimathi Albina D'Souza — Ex Maternity Asst — Rural Dispensary, Vandse, South Kanara Dt — Removal from Service Suit notice — Permission to engage Govt pleader.

Ref:— From the D.M.S, Letter No: Ref. 94593=1-Q2 dated 22.9.52

The file relates to the Request of the D.M.S for permission to engage the Govt pleader in the proposed Suit by the Ex Maternity Asst Srimathi Albina D'Souza of the Rural dispensary Vandse, against the orders of termination of her Services.

2 In Go. (MS) No: 442 Health dated 11.2.52 the memorialist Srimathi Albina D'Souza was informed that the Govt declines to interfere in the matter of termination of her Services by the D.M.O South Kanara. Attention is invited to pp 1-2 nf (L) where in circumstances under which the Govt have declines to interfere in the matter have been specified.

3 Srimathi Albina D'Souza now proposes to prefers a Suit in the Court against the orders of termination of her Services and demands that she may either be restored to her office in full payment of past Subsidy or in the alternative she may be paid a Sum of Rs 2500/- as damages for breach of Contract. (Last para on p5 Cf) The proceedings of the D.M.O terminating her contract were wrong, ultra vires & tyrannical. The present Suit notice has been given to the Collector South Kanara by Sri. V. Srinivasa Shetty, B.A, LL.B Advocate, Coondapur on behalf of his Client Srimathi Albina D'Souza. The Collector South Kanara has sent a Copy of the Suit notice to the D.M.O South Kanara for further action. The D.M.O in his Letter to the D.M.S has stated that it is a Case to be Contested, and that early Sanction of the Govt may be obtained for engaging the Services of the Govt pleader to proceed further in the matter. The D.M.S Requests Govt that necessary Sanction may be accorded in the matter.

4 Under the above circumstances it is for orders Whether the D.M.O South Kanara may be permitted to engage the Govt pleader in the proposed Suit for Contest.

5 Legal Dept may See file for Remarks.

9.10.52.

7/ 9

4. The appellate authority in the case, namely the D.M.S. would have examined the appeal of the Ex-Maternity Assistant in all its aspects. The lawyer of the Ex-maternity Assistant wants that she must be paid Rs. "past subsidy" in full; in addition to her reinstatement in service. Any subsidy due to her for any period prior to the termination of her services will be paid to her after observing the procedure prescribed under the rules. The threatened suit may perhaps be awaited. Legal may see for remarks. Finance may also see.

A & P & C

failing which she must be paid a sum of Rs. as damages

X

KM
10/10/52

SA
11/10

Legal / Fin

ASSISTANT SECRETARY 11 OCT 1952 LEGAL DEPARTMENT

Legal(Opinions-B)Dept

Health may kindly specify the point or points on which the remarks of this Department are called for.

GS
21.10.52

B
21.10.

J.S

Health

Legal 2.o. 16112/52-1
21.x.52

Health (I2) Dept

The remarks of Legal were considered necessary on the demand of the party at A on p l ante and also on B above. If the proposed suit is filed it may be necessary to utilize the services of the Govt Pleader. With these remarks the file may be sent to Legal / Finance

KM
28.10.52

SA
29/10

DEPUTY SECRETARY 49279 1952 HEALTH DEPARTMENT

RD.
22/10/52

ASSISTANT SECRETARY 17/30 31 OCT 1952 LEGAL DEPARTMENT

Legal(Opin

Legal(Opinions-B)Dept.

Health u.o.
4-50869/52-3
29/x/52

There is no information in the file on the point whether the prescribed procedure has been properly followed before

the services of Srimathi Albina D' Souza as Maternity Assistant were terminated by the D.M.O. or before her appeal was rejected by the D.M.S. It is presumed that the D.M.O. is the competent authority to terminate the services of the Maternity Assistant and that there is a statutory right of appeal to the D.M.S. against an order of such termination by the D.M.O. In paragraph 3 of the memorial at page 1 c.f. of G.O.No.442, Health, d.11-2-52, the ex-Maternity Assistant alleged that copies of the statements of the witnesses who deposed against her were not furnished, that the report of the R.M.P. that the copies were tendered but were refused to be received by the Maternity Assistant was utterly false and that she was not allowed to cross-examine the witnesses. It is not known whether these allegations have been dealt with in the order of termination of services. It is desirable to satisfy ourselves that the Government's case is not weak. This may be done urgently by Health.

Y

8S
12-11-52

12.11
JS

Health

Legal L.O. 17180/52
12.11.52

DEPUTY SECRETARY
53987
14 NOV 1952

Health (I) Dept.

Please see the remarks of Legal at pp.2-3 above.

2. The files of the D.M.O., South Kanara (Relating to the termination of the services of the Maternity Assistant) and of the D.M.S. (relating to her appeal) may be obtained for verifying the points raised by Legal.

3. Attention is invited to the letter of the D.M.O. South Kanara at pp.7-8 c.f. in which he has informed the lawyer of the Maternity Assistant that there has been no improper termination of service nor wrongful dismissal nor any wanton breach of contract, that there is no cause of action against the Government and that if in spite of his warning, legal proceedings are instituted against

4

the Govt., it would be defended at her risk. There is no information about the latest developments. Hence D.M.S. may be asked to report whether any legal proceedings have been taken in spite of the D.M.O.'s advise.

4. The draft Memo. below is for approval.

KMS 15-11-52

Please call for rifevntn on the points raised by the Legal Dept. Revise draft.

17/11/52

A revised draft is submitted for approval

17/11/52 to KMS 18-11-52

18/11

21.11.52

1. This is addition to be d. 20 Called for; may kindly be submitted to Govt. Revised.

18/11

draft overleaf submitted below. (typed)

20/11/52

P.L. 21

Issued as memo No: 45086 Gl/52-5 d 21.11.52.
Cross: 63373A/52 from the D.M.S. No 94523-492 d 24.12.52

In the note of Legal Department at pp.2-3 ante it has been suggested that the following points should be verified:-

(1) that the D.M.O., South Kanara is the Competent Authority to terminate the services of Srimathi Albina D'Souza and that the prescribed procedure has been properly followed before the services of Srimathi Albina D'Souza were terminated by the D.M.O.

pp 2-3 ante.

(2) that there is a statutory right of appeal to the D.M.S. against the orders of termination passed by the D.M.O. and that the prescribed procedure was followed properly before her appeal was rejected by the D.M. S.

p 3 ante

(3) that the allegations of Srimathi Albina D'Souza mentioned at Y on p.3 ~~n.f.~~ ante were dealt with in the order of termination of services of Srimathi Albina D'Souza.

p 3 ante

2. Point (1) above:- Under clause 10 of the agreement entered into by the Maternity Assistant with the P.D.B., South Kanara, the D.M.O., South Kanara is competent to

p 8 (5)

1 on p8 (S)

to pass any order for unsatisfactory work or gross misconduct on the part of the Maternity Assistant. Before passing such orders he is required to frame definite charges in writing, give reasonable opportuni-

p9 of (S)

ty to the maternity assistant to answer the same, then give his findings on each such charge and then pass final orders. Definite charges were framed by the D.M.O. against the ex. maternity assistant on 11-1-51 basing on the reports of the R.M.P. and the records of enquiry conducted by the A.D.M.O. In her letter dated 19.1.51 she asked for copies of certain references (3 references) and requested the D.M.O. to grant her time. Fourteen day's time was granted to her. Copies of 2 statements were also furnished to her through the R.M.P. while the maternity assistant wanted copies of 3 reports. The R.M.P. asked the maternity assistant to take the records after giving a receipt (acknowledgement) for the same. She refused to give a receipt and demanded that they might be given to her without a receipt. The R.M.P. refused to do so and reported the matter to the D.M.O. Two witnesses have given a statement to the R.M.P., in support of the statement at A above. The D.M.O. had passed final orders with reference to the records on hand, without the explanation of the maternity assistant. There would have been no serious objection if the maternity assistant had given a receipt and taken the records, if necessary by noting the number of pages in the records.

pp 95-96 (A)
(D.M.O's file)
pp 85-94 (A)
p 97 (A)
p 99 (A)
Presumbably the 3 Copies of all the 3 given p99 (A)
p 97 (A)
p 101 (A)
pp 101-104 (A)
A
p 105 (A)
pp 103-104 (A)
paragraph 2 & 3 - p 107 (A')
B

The D.M.O's reference at p.99 of (A) is dated 12.2.51. The R.M.P. has reported that he tried to hand over the copies to the Maternity Assistant on 17.2.51. It is not known whether this is the date on which he received the copies from the D.M.O. If so, the date of D.M.O's order of termination i.e. 28.2.51 will be within the 14 days time allowed to th maternity assistant and in that case, the order will

pp 104-105 (A)

X

5

be irregular, even though the maternity assistant can be considered to be wrong in view of B ~~above~~. on p5 ante X

3. Item (2) of para 1.

As stated in para 2 above the services of the maternity assistant were governed by an agreement she has entered into. There is a right of appeal to the D.M.S. vide clause 10 of the agreement at p.9 of (S). The maternity assistant had preferred the appeal within 10 days, even though no time limit has been prescribed therefor in the agreement. The D.M.S. on examining the case decided not to interfere in the matter and he therefore rejected the appeal. In her appeal to the D.M.S., she has stated that her petition dated 19.1.51 asking for copies of certain records was only a reminder and that she received no reply. She has also stated that the D.M.O. who knew the feeling between the R.M.P. and herself ought not to have sent the copies of the records through the R.M.P., while on previous occasions, he had sent communications to her direct by R.P. The D.M.S. hasnot examined the point. Her petition at p.97 of (A) appears to be an original reference and not a reminder. It is seen from the despatch entries at pp.4, 9, 18, 38 and 96 of (A) that previous communications were not sent to her direct. The D.M.S. seems to have followed the procedure.

pp39-41 (W)

vide A or p 7 (W)
& p97 (A)

4. Item (3) of para 1. In the order of termination of the services of the ex. maternity assistant, the D.M.O. has mentioned the fact that she refused to receive copies of the records sent through the R.M.P. In view of B on p.5 ante it appears that the allegations mentioned at Y on p.3 ante has to be taken to be incorrect, For orders.

para 2 - p 107 (A)

ASSISTANT SECRETARY 1367 21 JAN 1953 LEGAL DEPARTMENT

5. May be sent to Legal for further remarks.

KMS 20-1-53

The records asked for by her were given, but she refused to acknowledge them under a receipt. MEDMO cannot but pass an order

SAS 20/1/53

Health 100: 4508 G/52

Legal (Cpm) 20.1.53.

Legal(Opinions-B)Department.

With reference to the note of Health at X on pp.5-6 ante, it may be pointed out that in the Memo dated 12-2-51, the Midwife was directed to submit her statement of defence within fourteen days of its receipt. The Memo was apparently given to her by the Rural Medical Practitioner only on 17-2-51. If this is correct, the proceedings of the District Medical Officer dated 28-2-51 were passed without allowing her fourteen days to submit her statement of defence. It is therefore arguable that the procedure adopted was irregular. At the same time, it should be pointed out that in this case the procedure followed does not appear to have prejudicially affected the Midwife. Copies of the statements were offered to her, but she refused to take them after giving a formal receipt in token of having received them. She does not also appear to have filed her statement of defence. In the circumstances, it is rather difficult to hold that the procedure followed has vitiated the order.

In view of the above and in the circumstances pointed out by Health Department, this Department agrees that the threatened suit may be awaited.

Legal(Opinions-B)1367/53-1

28-1-53

28/1/53

28/1

J.S

DEPUTY SECRETARY 4615 29 JAN 1953 HEALTH DEPARTMENT

L-S 29/1/53

Health

Please see the notes of Legal (Opinion) above. They have agreed with this department's views at 'X' on page 5 ante, that the threatened suit may be awaited. The D.M.S. may be informed that the threatened suit may be

-t-

awaited. ~~The question may be taken up again if and when the suit is filed and judgment passed thereon.~~ [illegible] ais-11n7(R

A draft memo to the D.M.S. is submitted for approval. After issue, the papers may be recorded.

Please sum up in a Summarising note for Circulation urgently

5.2.53. KM 5/2/53

S A S 6/2/53

NOTE FOR CIRCULATION.

The file relates to the appeal of one Srimathi Albina D'Souza, ex. maternity assistant, Rural Dispensary, Vandse, South Kanara District, against termination of her services. The services of the ~~non~~ maternity assistant were terminated by the D.M.O., South Kanara for misconduct and irregularities in work. She appealed to the D.M.S. and the appeal was rejected by him. She petitioned the Govt. afterwards. The Govt. declined to interfere in the matter. She now represents that the termination of her services was improper and that it is a wanton breach of contract. She therefore demands that she should be restored in service with full payment of past subsidy. In the alternative she claims a sum of Rs.2,500/- as damages for breach of contract, failing which she proposes to institute legal proceedings seeking proper relief. The question has been examined. For details please see the notes at pp.2-7 ante. It is proposed to await the threatened suit from the party and to inform the D.M.S. accordingly. Legal Department have agreed with this. A draft memo is submitted for approval

pp95-96 of D.M.O's File at (A)

pp1 of (L)

pp1-2 of (L)

p17 c3 (L)

pp. 3-6-c.3

p-6-c 3

pp1-7 ante

p.7-ante

May be circulated to M(H) before issue.

9.2.53 KM 9.2.53

S A Sabharwal 11/2/53

M(H) 11/2

p 15 C/f Issued as memo no: 45086/52. H d 18.2.53.

p 17 C/f Circ: 9213/53. From the D.M.S. Reg no 94593/52 d.
The D.M.S. has acknowledged receipt of the
53/26 ✓ south with memo at p 15 C/f. The papers may be
Orders/ns 685 Healy
Recorded. 26.2.53

Subj: Suit. Suit Notice
Srimatte Alluna D'
Soiza - Previously
Maternity Asstt, Vaudse
South Kenara Dt
Against termination
of service. Decision
to await threatened
suit. Papers Recorded

25.2.53 25/2/53

26/2/53